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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 236

HENRY M. LADREY AND EVA W. LADREY,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

JAMES R. KIRKLAND,
ROBERT I. MILLER,
JOSEPH A. MCMENAMIN,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The petitioners, Henry M. and Eva W. Ladrey, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered May 20, 1946 (R. 71), affirming petitioners' conviction for bribery under Title 22, Section 701, in the D. C. Code (1940).

Opinion Below

The opinion in the Court of Appeals is not yet reported but is set out in full in the Record at page 70.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 A of the Judicial Code as Amended by the Act of February 13, 1925 (28 U. S. C. A. 347) and Sec. 269, as amended

(28 U. S. C. A., Sec. 391). See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

Questions Presented

1. The Court erred in refusing to direct a verdict of not guilty as to the defendant, Henry M. Ladrey, at the conclusion of the government's case and at the end of the whole case.

2. The Court erred in admitting testimony concerning other offenses for which the defendants were not on trial.

3. The Court erred in permitting a government witness to testify to alleged statements made by the defendant, Eva W. Ladrey, out of the presence of the co-defendant, Henry M. Ladrey.

4. The court erred in allowing improper argument to the jury by the Assistant United States Attorney prosecuting the case.

Statute Involved

The pertinent provisions of Title 22, Section 701, D. C. Code (1940) are as follows:

> "Whoever promises, offers, or gives or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be im-

prisoned not more than three years, or both." (Mar. 3, 1901, 31 Stat. 1330, ch. 854, Title 861).

Statement

Dr. Henry M. Ladrey, a physician, engaged in the private practice of medicine in the District of Columbia, and his wife, Eva W. Ladrey, a government employee working in the Department of Justice, were indicted, tried and convicted of bribery. A motion for a new trial was filed and argued but was denied by the Trial Justice. Thereupon, the said defendants were sentenced to serve one to three years, execution suspended and they were placed on probation. From this judgment they appealed.

The testimony in the trial showed that one Hazel Queenan had been the complaining witness in an abortion case then pending against the appellant Henry M. Ladrey. (R. 3, 10). This fact was stipulated by counsel for both sides and upon said stipulation the indictment in the pending abortion was admitted into evidence. The said indictment showed on its face that Hazel Queenan was the complaining witness in that case. On January 7, 1944, the appellant, Eva W. Ladrey was arrested in the home of Hazel Queenan, after allegedly attempting to induce the said Hazel Queenan to withdraw the charges against her husband, Dr. Ladrey, and leave town. Appellant, Dr. Henry M. Ladrey, was not with his wife at the time of her arrest. As the detectives rode around the neighborhood they found appellant, Dr. Henry M. Ladrey, standing by his car in conversation with a taxi driver. There was evidence that the taxi had collided with the doctor's automobile (R. 33, 40). There was some testimony that appellant Dr. Ladrey had driven his wife to the vicinity of Hazel Queenan's house on the evening in question, but this was denied by the appellant Dr. Ladrey. There was no evidence by either side that appellant Dr.

Ladrey knew where his wife was going at that time or what she was going to do and he denied that he had any knowledge or intent to aid, abet, or engage in any bribery.

When Hazel Queenan was on the witness stand she was permitted to testify in detail to all of the alleged actions of the appellant Dr. Ladrey in performing an abortion upon her. The trial court permitted this testimony on the theory that it was necessary for the government to show that the said Hazel Queenan was a "material" witness in the pending abortion case, even though it had already been stipulated previously and admitted as a fact in evidence that she was a witness in that case, and the indictment in said case, showing her name thereon as the complaining witness, was in evidence and had been read to the jury (R. 3, 4, 5, 6).

The prosecutor in his argument to the jury, in commenting upon the character testimony adduced in behalf of the appellants, mentioned certain "bankers" who had been apprehended several years ago who were supposed to be of good character. This had nothing to do with any of the evidence in the bribery case. Counsel for appellants objected to the improper argument and asked that a mistrial be declared, but the motion was denied. Counsel also made a motion at the end of the government's case, and again at the conclusion of the whole case, for a directed verdict of not guilty in behalf of the appellant, Dr. Ladrey, on the grounds that there was no evidence that said appellant had any guilty knowledge or guilty intent of the alleged bribery. These motions were also denied.

Specification of Errors to Be Urged

I

There was no evidence in the government's case and no evidence in the whole case that the defendant, Henry M. Ladrey, had anything to do with the alleged crime. The

only circumstance against him was the disputed testimony that he transported the co-defendant, Eva W. Ladrey, to or near the scene of the alleged offense. The trial court erred in refusing to direct a verdict of not guilty as to the defendant, Henry M. Ladrey, because in order to impute the necessary elements of knowledge and intent the jury would have to draw an inference from an inference, which would be speculation and not allowed according to law.

II

During the trial the court permitted the prosecuting witness to testify in great detail concerning an alleged act of abortion for which the defendants were not then on trial, the instant charge being bribery of the said complaining witness. Such testimony in detail was totally unnecessary because counsel for both sides had previously entered into a stipulation acknowledging as a fact that the complaining witness in the bribery case was also the complaining witness in the alleged abortion case and the indictment of that case was admitted into evidence.

III

Government witnesses were allowed to testify that the defendant, Eva W. Ladrey, made certain statements out of the presence of the co-defendant, Henry M. Ladrey; said statements being hearsay so far as Henry M. Ladrey was concerned and could be admissible only against Eva W. Ladrey.

IV

The prosecuting attorney was permitted to argue to the jury about matters that had no bearing whatever to the facts of the case on trial and could not have any effect except to unduly influence the minds of the jury against the defendants.

Reasons for Granting the Writ

The Court erred in refusing to direct a verdict of not guilty as to the defendant Henry W. Ladrey at the conclusion of the government's case and at the end of the whole case.

The only evidence in the whole case concerning the defendant, Henry M. Ladrey, was testimony that he had taken the co-defendant in his automobile to, or near the home of the complaining witness on the night in question. There was no other evidence whatever connecting him with the alleged bribery. The appellant, Henry M. Ladrey, contends that this meager testimony is not sufficient to sustain a conviction against him because there was no proof that he had any knowledge that the co-defendant was going to the home of the complaining witness to offer her a bribe, and further, there was no proof that he had any *intent* to join in, engage in, aid or abet in the alleged enterprise. In fact, *all* of the evidence was that he did not know where his wife, the co-defendant, was going or what she was going to do (R. 20, 23, 31, 32).

The trial court insisted that the jury should be allowed to draw inferences from the disputed fact that because Henry M. Ladrey drove his wife to the scene, he had both knowledge and intent to join in the alleged crime. Knowledge and intent are not the same thing. Knowledge is "information as to a fact; the act of knowing; clear perception of the truth; firm belief; information." Intent is "the design, resolve or determination with which a person acts." *Witters* v. *United States*, 70 App. D. C. 316, 319 (1939).

If it were a conceded fact that Dr. Ladrey drove Mrs. Ladrey to the scene (the point was denied by Dr. Ladrey on the stand R. 33), in order to convict him the jury would

have to derive the following inferences from that circumstance:

a. That he knew where she was going.

b. That he knew why she was going there.

c. That he did not object to her going.

d. That he took her there for the purpose of offering a bribe.

Thus it can be seen that it was necessary for the jury to draw four different inferences from one circumstance, the first two pertaining to guilty knowledge and the latter two pointing to guilty intent. It is urged that the latter two inferences could not be logically drawn unless the former two were established as a proved fact. But the former two, namely, those concerning guilty knowledge, are not proven facts, but are inferences themselves, to be derived from a circumstance. Hence we have an inference based upon an inference, which the law does not allow.

Inferences and deductions which the jury may be permitted to draw must be based upon some substantial evidence tending to establish the guilt of the defendant. Otherwise to permit the jury to convict upon inferences and deductions would merely mean to permit the jury to speculate as to the guilt of the defendant. This sort of procedure the courts uniformly condemn. *Sleight* v. *United States*, 65 App. D. C. 203.

In order to warrant a conviction on circumstantial evidence, it is necessary to prove the circumstantial facts and there must be no uncertainty as to the facts from which the controlling inferences are to be drawn. Such facts must be proved by direct evidence. Circumstantial evidence from which an inference of this existence may be drawn by the jury is not sufficient, and one presumption of fact cannot be based on another. There cannot be an inference

derived from an inference. *Spalitto* v. *United States,* 39 F. (2) 782. While natural inferences can be drawn from circumstances to prove guilt, such inferences cannot be substituted for the circumstances themselves. *Gerson* v. *United States,* 25 F. (2) 49.

In the instant case there was uncontroverted evidence that Dr. Ladrey was engaged in treating a patient in the same neighborhood as the home of the complaining witness (R. 33, 39, 44, 45, 59, 60) at approximately the same time that the detectives arrested his wife at the house of the complaining witness. There was also evidence that after treating the patient, a Mrs. Long, he had an automobile accident in the nearby vicinity and was engaged in conversation with the driver of the other vehicle when the detectives came up to him in the street (R. 33, 40). His treating a patient is a reasonable explanation for his presence in the neighborhood at the time and bears strongly on the hypothesis of innocence. There was no direct evidence that he knew where his wife was or what she was doing at that time, much less any direct evidence that he knew his wife was going to the home of the complaining witness or that she was going there for the purpose of offering a bribe.

Circumstantial evidence may warrant a conviction in a criminal case provided it is such as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendant; or, in other words, the facts proved must all be consistent with and point to his guilt *only* and be inconsistent with his innocence. The hypothesis of guilt should flow naturally from the facts proved and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or of guilt, the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted. *Vernon* v. *United States,* 146 F. 121; *Kirkwood* v. *United States* 256 F. 825.

In the instant case there was no probative evidence to be submitted to the jury concerning the defendant Dr. Henry M. Ladrey. There was merely evidence that he drove his wife to a certain place. At best this could only prove that he did drive her there and nothing else. There was also evidence that he treated a patient at approximately the same time in the immediate vicinity.

Whenever a circumstance relied on as evidence of criminal guilt is susceptible of two inferences, one of which is in favor of innocence, such circumstance is robbed of all probative value, even though from the other inference, guilt may be fairly deductible. Mere suspicion is not sufficient on which to base a conviction. *Turinette* v. *United States*, 2 F. (2) 15, 17. Evidence creating a mere probability of guilt is not sufficient to sustain a conviction; much less is evidence which gives rise to a mere suspicion or conjecture of guilt. *Kassin* v. *United States*, 87 F. (2) 183.

Even if the testimony had shown that Dr. Ladrey knew that his wife was going to bribe the complaining witness (although such testimony was not adduced at any part of the trial) it still would not have been any proof that he approved of his wife's actions or had any control over them, or that he intended to willingly aid her in them. It has been held that evidence, which at the most showed only that a defendant associated with a codefendant convicted of the crime, and that he had knowledge that a crime was to be, or had been, committed, was insufficient to sustain a conviction. *O'Brien* v. *United States*, 299 F. 568.

Both knowledge and intent are separate essential elements of this crime, which must be proved in order to sustain a conviction against the defendant Dr. Henry M. Ladrey. But Dr. Ladrey denied both knowledge and intent immediately upon his arrest, as shown by the testimony of the government's own witnesses (R. 20, 23), and he also

reiterated his denial of both knowledge and intent when he took the stand in his own behalf (R. 40, 41, 42).

Facts cannot be proved by a circumstance merely consistent with their existence. *Fuguay* v. *State*, 114 So. 892, 22 Ala. App. 1264. Nor can facts be established by not believing witnesses who deny them. *State* v. *Poplowski*, 133 A. 671, 104 Conn. 493.

The trial court denied a motion for a directed verdict made by counsel in behalf of the defendant Dr. Henry M. Ladrey at the conclusion of the government's case. This motion was renewed at the end of the whole case and was again denied. It is respectfully urged that prejudicial error occurred in allowing the case of the defendant Henry M. Ladrey to be submitted to the jury without sufficient proof, but merely on speculation and conjecture.

II

The Court Erred in Allowing into Evidence Testimony Concerning Other Offenses for which the Defendants Were Not on Trial.

At the beginning of the trial, counsel for the appellants, defendants below, entered into a stipulation with the prosecuting attorney, whereby it was admitted into evidence that an indictment, the original document of which was produced in open court, was then pending against the defendant, Dr. Henry M. Ladrey, charging him with having performed an abortion against the complaining witness, Hazel Queenan. It was also stipulated that the said Hazel Queenan was a witness in the abortion case still pending. (R. 3, 4, 5).

The appellants contend that this stipulation was sufficient for the government to proceed with the trial of the instant case, charging bribery of the said complaining witness, Hazel Queenan, because the stipulation established as a

fact that the said Hazel Queenan was a witness in a case that was still pending. Under the wording of the bribery statute (D. C. Code (1940), 22-701) this was all that was necessary to be proved by the government to establish that phase of their case. Nevertheless, the trial court permitted the prosecutor to interrogate the witness Hazel Queenan on the stand, concerning all of the details of the alleged abortion, in spite of the fact that it was already admitted and made part of the evidence that she was a witness in the other case. (R. 4, 5).

It is a well-established principle of law that upon the trial of an indictment, charging a specific crime against the accused, it is not competent for the prosecution to put in evidence proof tending solely to show that the defendant had been guilty of other offenses. *Laughlin* v. *United States,* 67 App. D. C. 353; *Ryan* v. *United States,* 26 App. D. C. 74.

It is admitted that there are exceptions to this general rule, which, according to the decisions, are:

When the evidence of other crimes tend to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan; (5) the identity of the person charged. *People* v. *Molineaux,* 168 N. Y. 264, 61 N. E. 286; *Martin* v. *United States,* 75 U. S. App. D. C. 399.

The detailed testimony related on the stand in the instant case by the witness Hazel Queenan (R. 10, 11, 12) concerning the placing of her upon a certain table in the doctor's office, the use of certain instruments upon her person, her subsequent illness and her admission to a hospital for treatment, had no bearing whatever upon the charge of bribery, for which the defendants were on trial. Such detailed statements of the witness could only have tended to humiliate and disgrace the defendant Dr. Henry M. Ladrey and his

wife, the co-defendant, Eva W. Ladrey; the testimony was not necessary to the inquiry on hand, and was likely to create an adverse and prejudicial feeling against the defendants in the minds of the jury. *Silverberg* v. *United States* 4 F. (2) 908, 909; *Dyar* v. *United States,* 186 F. 617; *Taliaferro* v. *United States* 213 F. 25.

At another part of the trial a different witness, one Edgar E. Scott, was permitted to touch upon the pending abortion case in his testimony (R. 25, 26). It is contended that this was also improper because it may have had a cumulative prejudicial effect against the defendants in the minds of the jury.

The trial court insisted that the reason it was permissible for the government to bring out the details of the abortion case from the witness, Hazel Queenan, was because it was necessary for the government to show that she, the said Hazel Queenan, was a "material witness" in the pending abortion case. The wording of the statute does not bear out this theory. It merely states "any witness." The action of the trial court was objected to (R. 7, 8, 9) because it had already been admitted into evidence that an indictment was pending and that Hazel Queenan was a witness in that case. Her testimony concerning the full details of the abortion case, for which the defendant, Dr. Ladrey, was not then on trial, was totally unnecessary as government proof against the defendants on the bribery charge; it should not have been allowed, and it is respectfully urged that prejudicial error occurred in allowing such testimony to be received.

III

The Court erred in permitting government witnesses to testify to alleged statements made by the defendant, Eva W. Ladrey, out of the presence of the co-defendant, Henry M. Ladrey.

The record shows that the trial court permitted police officers to testify that Eva W. Ladrey made statements out of the presence of the co-defendant, Henry M. Ladrey, following her arrest (R. 19, 23) to the effect that her husband and co-defendant, Henry M. Ladrey, brought her to, or near, the scene of the alleged crime. The statements were objected to and exceptions noted (R. 43, 44, 65, 67).

Such statements were admissible only against Eva W. Ladrey. They were hearesay in character and had no probative force against the co-defendant, Henry M. Ladrey. By virtue of being remote and not spontaneous, they did not come within the exception of the rule of the *res gestae.* On the other hand, there was neither a charge of conspiracy in the indictment, nor the showing of any evidence from which an alleged conspiracy could be drawn. The trial court should have directed a verdict in favor of the defendant, Henry M. Ladrey, in the absence of positive evidence to connect him with the crime charged.

The appellate court committed error in contending that the jury was justified in regarding inconsistent statements as "in themselves tending to show guilt and the *existence of a conspiracy*" (italics supplied). The court further erred in holding that it was immaterial that the indictment did not specifically charge that the defendants had conspired. The case of *American Fur Company* v. *United States,* (2 Pet. 358), relied upon as authority for this position by the court, involved statements made by an agent in connection with libel proceedings brought to confiscate liquor. The case of *Wiborg* v. *United States,* 163 U. S. 632,

involved the illegal fitting out of a military expedition for Cuba in violation of the neutrality laws of the United States and also had no bearing upon the instant case.

In a local murder case, statements made by the wife out of the presence of her husband were properly excluded by the Court. *Lomax* v. *United States,* 37 App. D. C. 414, 1911. In another local case, the court was careful to point out that no declarations should be received in evidence against a co-defendant unless there was first some evidence tending to prove a conspiracy which implicated the co-defendant, *United States* v. *Gunnell,* 1886, 5 Mackey (16 D. C.) 196. See also *Minner* v. *United States,* 57 Fed. (2) 506, C. C. A. 1932.

In the case of *Itaw* v. *United States,* 223 Fed. 25, 1915, C. C. A. 9th, the court stated the rule as follows:

> "Where two defendants charged with crime, are tried jointly, a statement made by one of them is admissible in evidence against him but not against his co-defendant unless made in his presence and assented to by him either actually or impliedly. *Sparf & Hansen* vs. *United States,* 156 U. S. 51, 58, 715, 15 Sup. Ct. 273, 39 L. Ed. 343; *Alsabrooks* v. *State,* 52 Ala. 24; *Johnson* v. *State,* 70 Ga. 725; *Brandt* v. *Com.* 94 Pa. 290; *State* v. *Cram,* 65 Vt. 650, 32 Atl. 502; *Com.* v. *Bishop,* 165 Mass. 148, 42 N. E. 560."

To like effect was the court's ruling in the case of *Tresca* v. *United States,* 183 Fed. 786, 1910 C. C. A. 2d, wherein two persons were jointly indicted for uttering counterfeit money. A statement of one defendant out of the presence of the other alleging that the second had participated in the alleged crime was held to have been erroneously received by the trial court. The Court pointed out:

> "There was error therefore in the denial of the motion to discharge him on the ground that there was no evidence to connect him with a crime."

The rule excluding such statements made by one co-defendant out of the presence of the other has been followed in the state courts.[1] Accordingly it is submitted that the trial court erred in receiving such testimony here.

IV

The Court Erred in Allowing Improper Argument to the Jury by the Assistant United States Attorney Prosecuting the Case.

In his argument, the prosecuting attorney, in commenting upon the previous good reputation of the defendants, mentioned certain "bankers" who had been charged with crime (App. 66, 67, 68, 69). The case on trial had nothing to do with any "bankers" and the argument was far removed from any of the facts of the case. This was unfair argument and should not have been allowed, because it may have unduly influenced the jury against the defendant. *Berger* v. *United States,* 295 U. S. 78, 88.

Conclusion

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

JAMES R. KIRKLAND,
ROBERT I. MILLER,
JOSEPH A. MCMENAMIN,
Counsel for Petitioners.

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[1] *Bowling* v. *Com.*, Ky. 1910, 126 S. W. 360.
State v. *Beebe,* Wash. 1912, 120 P. 122, 66 Wash. 463.
McClelland v. *State,* Md. 1921, 114 A. 584, 138 Md. 533.
Pl. v. *Coltra,* Cal. 1931, 2 P. (2d) 35, 115 Cal. App. 539.
St. v. *Archibald,* Ia. 1927, 215 N. W. 258, 204 Ia. 406.
Williamson v. *State,* Ala. 1938, 186 So. 785.
State v. *Perelli,* Conn. 1939, 5 Ott (2d) 705, 125 Conn. 321.
McPhee v. *Pl.,* Colo. 1940, 98 P. (2d) 997, 105 Colo. 413.
Pl. v. *Vaccaro,* N. Y. 1943, 42 N. E. (2d) 472, 288 N. Y. 170.

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CITATIONS

Statutes involved:

District of Columbia Code (1940 ed.):

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 236

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v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 71–75) is reported at 155 F. 2d 417.

JURISDICTION

The judgment of the Court of Appeals was entered May 20, 1946 (R. 76). On June 14, 1946, an order was signed by Mr. Justice Black extending the time within which to file a petition for a writ of certiorari to June 29, 1946 (R. 78). The petition for a writ of certiorari was filed June 27, 1946. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the conviction of petitioner Henry M. Ladrey.

2. Whether it was error, at the trial of an indictment charging offering of a bribe to a witness in a pending abortion prosecution, to permit the witness to testify concerning the abortion performed on her for the purpose of establishing that the witness to whom the bribe was allegedly offered was a material witness, where counsel for the defendants accused of the bribery attempt specifically withdrew their objections to the testimony.

3. Whether the prosecuting attorney's argument to the jury was improper.

STATUTES INVOLVED

The pertinent sections of the District of Columbia Code (1940 ed.) are as follows:

> SECTION 22–701. Whoever promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of

money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be imprisoned not more than three years, or both.

SECTION 22–105. In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

STATEMENT

A one-count indictment filed in the District Court of the United States for the District of Columbia charged that on January 7, 1944, there being then pending in the same court a proceeding in which petitioner Henry Ladrey was charged with the crime of abortion and in which one Hazel Queenan was a witness, petitioners

offered $260 to the witness Queenan with intent to influence her action and evidence as witness in the proceeding by inducing her to remain away and not be present as such witness in the proceeding (R. 2–3). Petitioners were convicted (see R. 71) following a trial by a jury (see R. 69). They received suspended sentences of one to three years' imprisonment and were placed on probation (see Pet. 3). On appeal, their convictions were affirmed (R. 76).

The evidence adduced by the Government may be summarized as follows:

Hazel Queenan, upon whom petitioner Henry Ladrey, a physician, was charged with having attempted to perform an abortion, testified that a woman later identified as petitioner Eva Ladrey, Dr. Ladrey's wife, came to her home at 2310 Georgia Avenue, N. W. on the evening of January 6, 1944, and inquired whether she was "ready." Upon Hazel's reply that she had to attend a union meeting, Eva informed her that she would return the following evening. Eva did return the following evening, January 7, 1944. Sergeants Scott and Crooke of the Metropolitan Police Department had secreted themselves in the kitchen of the Queenan home, Hazel having notified the police of Eva's coming to her house the previous evening. Hazel asked Eva to explain what "Mrs. Johnson," who had approached Hazel on December 27, 1943, in connection with the abortion case against Dr. Ladrey, "had decided with Dr. Ladrey." Eva

replied that Mrs. Johnson had been to see Dr. Ladrey; that Dr. Ladrey had agreed to "cooperate" with Hazel if she "would go away"; that first Hazel would have to go to the District Attorney and "make a statement" that she "did not want to prosecute against Dr. Ladrey"; and that after she had made the statement she would be given $100 and, after she had gone away, another $100, plus a refund of the $60 she had been charged for the abortion. Eva showed Hazel an envelope in her pocketbook, which she said contained $100. At that point Sergeants Scott and Crooke entered, and, on being questioned, Eva told Scott that her name was "Mrs. Wilkins." A short while later, the policemen left with Eva. As they were leaving, Hazel told Crooke that Eva had $100 which she had offered her. (R. 6–16.)

Sergeant Scott testified that he and Sergeant Crooke went to the Queenan residence at about 6 P. M. on January 7, 1944, and concealed themselves in the kitchen. Shortly thereafter, a woman arrived and carried on a conversation with Hazel in the front room of the apartment. He overheard the woman, whom he later identified as Eva Ladrey, tell Hazel that she "had come to make arrangements with her to go over to Dr. Ladrey's house"; that "Dr. Ladrey had sent her there" and "wanted her to come over there and make arrangements to drop the charges that had been placed against him in an abortion case";

that Dr. Ladrey "had plenty of money" and "would pay her the $60" charged for the abortion, plus "expenses to go away"; and that Hazel "was to sign papers and go to the District Attorney's office and have the case dropped." Thereupon, Scott entered the room where the conversation had occurred and asked Eva her name, to which she replied "Mrs. Wilkins." She admitted that Dr. Ladrey had sent her there to make arrangements for Hazel to drop the case against him, and that she had offered Hazel $60 and expenses to go away and drop the case. Asked by what means she came to the house, Eva answered that she had come by streetcar. Scott then placed her under arrest and, in company with Sergeant Crooke, they left the Queenan house. Scott looked up and down the street "to see if anybody was there that had brought her to the place," and suggested, "Let's walk around the corner here." Thereupon, Eva said, "Well, I will tell you, I am Mrs. Ladrey; Dr. Ladrey is waiting at 6th and Trumbull for me." The three then proceeded in the police car to the corner of 6th and Trumbull Streets, where Dr. Ladrey was standing near an automobile. Scott ordered Dr. Ladrey to get into the police car, and as they drove to police headquarters, he said, "Doctor, Mrs. Ladrey has told us that you sent her up here and—or that you brought her up here and sent her in this house to get this girl to drop the charges, and she has told

us that she offered her money and we heard her offer the money. Is that true?" Dr. Ladrey replied, "Yes, I did bring her up here," but added, "I didn't know what she was going to do and I didn't know where she was going." At police headquarters, Scott asked Eva "who was this Mrs. Johnson, if she knew, that had been to this house previous to her." Eva replied, "Well, I don't want to tell who she is because she was doing a friendly gesture for us when she went there." Scott asked Eva how much money she had in her pocketbook, to which she replied, "* * * just two or three dollars and some change." He then asked and received permission to examine her pocketbook, and found an envelope containing $100. Eva explained that she "was keeping that for someone, and that's how I happened to have that." Scott also found in the pocketbook a note, which Eva admitted was in her handwriting, reading (R. 29):

> I prefer (wish) that the charges made against ---------- be dropped. I made several misstatements against him. I do not want to be tried for perjury. So I am asking you to drop the matter please. I thank you.

Asked why she had the note, Eva said that "the girl had propositioned her to give her the money and that's why she had the note," but that she "did not intend to have the girl sign it." (R. 20–31.)

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Sergeant Crooke also testified to substantially the same events as those related by Sergeant Scott (R. 16–20).

Dr. Ladrey, who testified for the defense, denied that he drove his wife "up or near" the Queenan residence on the evening in question. He maintained that he had not seen his wife since early that morning. Asked if he knew how his wife "happened to bring the officers around to Sixth and Trumbull Streets when she was arrested," he replied, "I don't—if she brought them there. She did not." He denied knowing anything about where his wife "was or where she was going or what she was doing" on the day in question. He said that he and his wife "always meet there just off the Emergency Department of Freedmen's Hospital," "usually by arrangement." Asked if he had an arrangement to meet her on the evening in question, he replied in the affirmative, "because, strange to say, that evening I did know I was going to see Mrs. Marshall at the hospital." He denied all knowledge, prior to his arrest, of the $100 and the note found in his wife's pocketbook, and stated that he had never discussed the abortion case with her. He also denied telling Sergeant Scott that he had brought his wife to the vicinity of the Queenan residence. (R. 32–48.)

Eva Ladrey, who also testified for the defense, denied that she offered money to Hazel as a

bribe. Her story was that Hazel wished to drop the charges against Dr. Ladrey because she had made false statements against him, and that she (Eva) was merely helping her make arrangements to discontinue the prosecution. She maintained that her husband knew nothing of her going to Hazel's, and that she had not seen him, previous to his arrest, since early that morning. She denied having discussed the matter with her husband after Hazel told her she wished to drop charges against him. She denied that there was any discussion of money in her conversation with Hazel. She denied having told the officers that Dr. Ladrey had brought her to the Queenan house. She denied all knowledge of "anybody by the name of Johnson that had been up there to see Miss Queenan," and denied having told the officers that she "didn't want to implicate her because she only went as a friendly gesture." She denied giving a false name when first arrested, saying she gave her name as "Mrs. Eva Wilkins Ladrey." (R. 48–59.)

ARGUMENT

1. It is contended on behalf of petitioner Henry Ladrey that he was entitled to a directed verdict of acquittal at the conclusion of the Government's case and at the end of the whole case (Pet. 4–5, 6–10). But, as the Court of Appeals pointed out, he waived the right to insist upon his motion for a directed acquittal at the end of the Govern-

ment's case by introducing evidence on his own behalf. But in any event, the contention is clearly without merit. The jury was entitled to believe the testimony of Sergeant Scott (*supra,* p. 7) and Sergeant Crooke (R. 19–20) that Dr. Ladrey admitted to them that he had driven his wife to the vicinity of the Queenan residence. Likewise, as the Court of Appeals said (R. 73), the jury "could well have regarded as incredible the declaration of a man who lived in Alexandria, Virginia, that he had let his wife out of the car in the darkness of a winter evening at Georgia Avenue and Trumbull Street, some miles from their residence, but that he did not know where she was going or what she was going to do." This admission by Dr. Ladrey and his incredible exculpatory statement which he coupled with it gave rise to the permissible inference that he was well aware of his wife's effort to bribe Hazel, that he was in fact the instigator of the crime, and that he conspired with her to commit the crime. And when the admission is considered in conjunction with his wife's statement to Hazel in offering the bribe (*supra,* p. 5) which both Sergeant Scott (*supra,* pp. 5–6) and Sergeant Crooke (R. 17–18) overheard, to the effect that she was acting on behalf of Dr. Ladrey,[1] no reasonable doubt of his guilt could remain.

[1] The wife's statement was competent evidence, as recognized by the court below. See R. 74. See also pp. 14–15, *infra.*

2. It is further contended on behalf of petitioner Henry Ladrey that the trial judge erred in permitting the police officers to testify that Eva Ladrey, following her arrest, made a statement, out of the presence of Dr. Ladrey, to the effect that Dr. Ladrey had brought her to, or near, the scene of the alleged crime (Pet. 5, 13–15). Since it is conceded that the testimony was admissible against Eva (Pet. 5, 13), the contention is really that the trial judge should have instructed the jury that the statement of Eva to which the police officers testified should be considered only against Eva and not against Dr. Ladrey. The record, however, shows that counsel for petitioners did not object at the time to the officers' testimony that Eva made the statement (see R. 19, 23). The first time the admissibility of the statement as against Dr. Ladrey was questioned was following a discussion of a motion for a directed acquittal at the conclusion of the Government's case, when counsel for petitioners asked the judge to "instruct the jury that anything said by the wife out of the presence of the defendant, the male defendant, is binding on her but not binding on the male defendant" (Tr. 94).[2] The judge indicated

[2] The printed record before this Court, references to which have been made herein by the letter "R.," consists of excerpts from the original typewritten transcript of record in the trial court, which excerpts constituted a "Joint Appendix" to the briefs in the Court of Appeals. The printed record does not contain petitioners' requested instruction and the

that he agreed generally with this statement, but doubted that it applied to statements made in offering the bribe (Tr. 95). The matter was subsequently discussed at greater length (Tr. 123–136), and the judge charged the jury on the point as follows (Tr. 236–237):

> Now, I want to give you an instruction respecting portions of the evidence that was admitted in this cause by way of testimony as to statements made by one of the defendants. * * *
>
> But assuming now, and I am not intending to give any instruction as to what you should find, but assuming you find that such statements were made, I want you to understand the law with respect to such statements.
>
> There was testimony given concerning alleged statements made by the woman defendant out of the presence of the male defendant. Now, if you believe such statements were made, you may consider those statements as evidence where the statements constituted the offense that is here charged in determining whether or not an offense was committed.
>
> You may not consider as against the male defendant statements made out of his presence by the female defendant in the nature

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instruction given in respect of the particular issue here involved, but the original transcript of record lodged with the Clerk of this Court does. References herein to the latter are indicated by the abbreviation "Tr."

> of admissions against interest and narrative statements of what happened afterwards. Statements that she may have made out of his presence may be considered as evidence against her. Statements made after the offense out of his presence made by her may not be considered as evidence against the male defendant. You must with respect to that defendant consider only statements made by him or acts done by him.

Plainly, therefore, the trial judge did specifically instruct the jury not to consider as against Dr. Ladrey the admission of Eva, made out of his presence, that he brought her to or near the scene of the alleged crime. In short, the trial judge did give the instruction which the present contention erroneously assumes was not given. It is not claimed that the statements made by Eva to Hazel prior to her arrest and in connection with the offer of the bribe were not admissible as against Dr. Ladrey. Nor could such a claim be successfully made, since those statements were made in furtherance of the conspiracy of which there was independent evidence that Dr. Ladrey was a member, and consequently were admissible against him under the general rule making one conspirator liable for the acts and declarations of a co-conspirator made in furtherance of the object of the conspiracy (see the opinion below (R. 73–74), where this rule and its application to this

case are discussed). It might be added that even if the trial judge had not instructed the jury not to consider as against Dr. Ladrey Eva's admission to the officers, subsequent to her arrest, that Dr. Ladrey had brought her to the vicinity, the failure so to instruct could not have been prejudicial, in view of the fact that Eva had told Hazel, prior to her arrest and in connection with the offer of the bribe, that "Dr. Ladrey had sent her there" (supra, p. 5) and, in effect, that she was acting in his behalf (*supra,* pp. 5–6; see also R. 17–18), which statements, as we have indicated, were indisputably admissible against Dr. Ladrey.

3. On behalf of both petitioners, it is contended that the trial court erred in permitting Hazel Queenan to testify concerning the attempted abortion performed on her by Dr. Ladrey since such testimony "could only have tended to humiliate and disgrace" petitioners (Pet. 5, 10–12). The facts on which this contention is based are as follows: Counsel for the Government and for the defense stipulated at the beginning of the trial that on January 7, 1944, the date of the alleged bribery, a prosecution for attempted abortion was pending against Dr. Ladrey. The indictment in the abortion case, which named Hazel Queenan as the woman upon whom the attempted abortion was committed, was admitted in evidence without objection by the defense. When Hazel was called as a witness, and it appeared that counsel for the

Government was about to question her with reference to the abortion, defense counsel requested the court not to permit government counsel "to go into too much of the evidence concerning that other case." Government counsel said that, if defense counsel would "stipulate that she is a witness in that other case," that would be sufficient. Defense counsel maintained that it was incumbent on the Government "to prove under this indictment that she was a material witness." The court said that the Government was "entitled to show that she is a material witness * * * by testimony," but that the necessity for such testimony could be obviated by a mutually agreed upon stipulation. After further discussion, which did not result in the suggested stipulation, government counsel suggested that, to save time, he be permitted to establish by testimony simply that Hazel "was a woman who had an abortion performed on her by this doctor." The court thereupon gave leave to the Government to adduce by testimony only such facts as would show that Hazel was a material witness in the abortion case. Defense counsel thereupon specifically withdrew their objections. (R. 3–9.) Government counsel proceeded to question Hazel briefly with reference to the abortion attempt without further objections by defense counsel (R. 10–12). Even if petitioners' contention were meritorious, therefore, it is clear that they waived

their objection to the testimony now challenged. But in any event the contention is without merit. As the Court of Appeals said (R. 73), it was proper to admit "evidence tending to show that Hazel Queenan was a material witness in the abortion case. Her testimony concerning the operation was limited to statements to the effect that she was the person upon whom the operation had been performed, and statements showing the nature of the operation. This was no more than the bare necessity of the case for the prosecution required."

The related contention (Pet. 12) that petitioners were prejudiced by Sergeant Scott's statement that "in looking through the pocketbook I found a written note in there with reference to the other case" (R. 25) is equally without merit, since the "other case" was obviously a reference to the pending abortion case, concerning which Hazel had already testified, and the indictment in which had been admitted in evidence with the consent of defense counsel (*supra,* pp. 14–15).

4. Finally it is contended that the court erred in allowing improper argument to the jury by the prosecuting attorney (Pet. 5, 15). The record shows that petitioners introduced in their defense evidence of their good reputation in the community. The prosecuting attorney, in his closing argument to the jury, pointed out that, though evidence a defendant's good reputation may be

such as to raise a reasonable doubt of his guilt of the crime charged, such evidence should be considered "in connection with all the other evidence in the case"; that a person's reputation consists merely of "what other people think of him"; and that it should not be thought "because a person has a good reputation that he cannot commit a crime." By way of illustration, he said, "* * * for example, a few years ago you heard of some prominent bankers, and you may recall in your own experience individuals that you thought had good reputations, but they went to the penitentiary for something." (R. 66–69.) We submit that there was nothing improper or prejudicial to petitioners in such a line of argument, particularly in view of the overwhelming evidence of their guilt.

CONCLUSION

The decision below is correct and no conflict of decisions or important question is involved. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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